IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14750 of 2004

Between:

1 M/s. Laxmi Sugars, a Partnership firm, having its office at Maharajgunj, Hyderabad, rep by its partner Sri Inderraj Agarwal.
2 Inderraj Agarwal, S/o. Late Gulraj Agarwal,
R/o. Maharajgunj, Hyderabad.

..... PETITIONERS

AND

1 The Cooperative Sub-Registrar/Arbitrator/ Sale Officer, C/o. Vardhaman (Mahila) Cooperative Urban Bank Limited, Giranjali Complex, Eden Bagh, Ramkota, Hyderabad.
2 The Divisional Cooperative Officer, Golkonda Division, Mukaramjahi Road, Hyderabad.
3 Vardhaman (Mahila) Cooperative Urban Bank Limited, Giranjali Complex, Eden Bagh, Ramkote, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to grant a writ or direction or order, more so in the nature of writ or mandamus, declaring the sale proceedings as per the paper publication issued by the respondents in the Hindi newspaper Milap on 31-7-2004 proposing to sell the property of the petitioners Plot No. F8, admeasuring 200 sq. yards situated in Fatehnagar, Rangareddy District, in auction on 23-8-2004 is illegal, arbitrary, without jurisdiction and violative of Article 14 of constitution of India and also the provisions of the A.P. Cooperative Societies Rules and consequently to direct the respondents to transfer the demand notice issued pursuant to the award award Dt. 4-5-2002 in A.R.C. No. 97/2002/CUB/GD to the file of the District Registrar, Rangareddy District.

Counsel for the Petitioner : MR. R.RAGHUNANDAN

Counsel for the Respondents : GP FOR COOPERATION

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.14750 OF 2004

ORDER :

This writ petition is filed seeking a declaration that the sale proceedings as published in the local daily on 31-07-2004 proposing to sell the property of the petitioners in Plot No.F8 situated in Fateh Nagar, Ranga Reddy District in auction on 23-08-2004 are arbitrary and illegal and also in violation of the provisions of the A.P. Co-operative Societies Rules.

It is not in dispute that on a reference made at the instance of the third respondent Bank, an Award was passed against the petitioners by the 1st respondent -- Co-operative Sub-Registrar / Arbitrator. The petitioners earlier approached this Court by filing W.P. No.235 of 2003 contending inter alia that the arbitration proceedings are not maintainable since the amount claimed by the third respondent was above Rs.10 lakhs the Debt Recovery Tribunal constituted under the Recovery of the Debts Due to the Banks and Financial Institutions Act, 1993 alone is competent and the 1st respondent has no jurisdiction. Though initially unconditional stay was granted, subsequently by order dated 01-04-2004 the interim stay was modified subject to the condition of depositing half of the principal amount. It appears that the petitioners failed to comply with the said conditional order. However, they filed an Appeal before the Co-operative Tribunal under Section 76 of the A.P. Co-operative Societies Act, 1964, (for short, 'the Act'), but the same was dismissed on the ground that the matter is subjudice before this Court. In the meanwhile, since the petitioners failed to deposit half of the principal amount i.e.,

Rs.27,25,000/- as per the order of this Court dated 01-04-2004 and since under the said order it was made clear that in the event of the failure to deposit the said amounts the stay stands vacated and it is open to the respondents to execute the award, the third respondent published the sale notice proposing to conduct the sale on 23-08-2004. The said sale notice is under challenge in this writ petition on the ground that since the property brought to sale is situated in Rangareddy District, as per Rule 52 (1) and Rule 52(3) of A.P. Co-operative Societies Rules, the District Registrar of Rangareddy alone would have jurisdiction to sell the property and neither the first respondent nor the 2nd respondent are competent to deal with the property in any manner. It is also claimed that though the petitioners got issued a legal notice dated 05-08-2004 raising the said objection, the respondents refused to consider. Hence, this writ petition.

This Court while directing notice to the respondents, by order dated 19-08-2004 directed that pending further orders, the proposed sale may go on, but the same shall not be confirmed.

After service of notice, on behalf of the third respondent Bank, a detailed counter-affidavit has been filed stating that the award was passed on 04-05-2002 for recovery of Rs.54,49,786-25 ps with interest at 20% per annum from 01-01-2002. The 1st petitioner firm was the principal borrower and the 2nd petitioner stood as guarantor along with three others and all of them are made liable jointly and severally under the Award dated 04-05-2002. The petitioners having obtained an interim order in W.P.No.235 of 2003, failed to comply with the conditional order and consequently the interim stay stood vacated. In the circumstances, the third respondent is entitled to execute the Award and accordingly the sale proceedings were initiated. It is further stated that one of the judgment-debtors filed a separate writ petition (W.P.No.14858/2004) on 20-08-2004 and by virtue of the interim orders granted in the said writ petition staying all further proceedings in E.P.No.66 of 2002 subject to the condition that the petitioner therein deposits a sum of Rs.25 lakhs within a period of six weeks, the sale proposed to be conducted on 23-08-2004 did not take place. Thus, it is prayed that the petitioners who failed to comply with the earlier orders of this Court are not entitled to seek any further relief under Article 226

of the Constitution of India and the Writ Petition is liable to be dismissed.

I have heard the learned Counsel for the petitioner Sri R.Raghunandan and Sri K.Gopala Krishna Murthy, the learned Counsel appearing for the third respondent.

At the outset, it is to be noted that Rule 52 of A.P. Co-operative Societies Rules provides for a detailed procedure for execution of decrees, decisions or orders passed under the Act. It is always open to the defaulter or any person whose interests are affected by the sale to raise an objection in the execution proceedings as to the attachment or sale of the property in which event the officer shall investigate the objection and dispose it of on merits. The Act also provides for an Appeal with regard to matters arising out of the proceedings in execution of the awards. The petitioners having failed to raise any such objection in accordance with the procedure prescribed under the Rules, are not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is also to be noted that since the sale scheduled on 23-08-2004 did not take place, as rightly contended by the learned Counsel for the third respondent, the cause in this writ petition does not survive and the Writ Petition has been rendered infructuous.

Viewed from any angle, the matter does not deserve any adjudication on merits and accordingly the writ petition is dismissed. However, it is made clear that this Court has not expressed any opinion with regard to the objection raised by the petitioner as to the competency of the first respondent to sell the property in question and this order shall not preclude the petitioners to work out the appropriate remedy as available under law. No costs.

28th September, 2004.

Gbs

To

1 The Cooperative Sub-Registrar/Arbitrator/ Sale Officer, C/o. Vardhaman (Mahila) Cooperative Urban Bank Limited, Giranjali Complex, Eden Bagh, Ramkota, Hyderabad.
2 The Divisional Cooperative Officer, Golkonda Division, Mukaramjahi Road, Hyderabad.
3 Vardhaman (Mahila) Cooperative Urban Bank Limited, Giranjali Complex, Eden Bagh, Ramkote, Hyderabad.

4.2CCs to G.P. for Co-operation, High Court of AP Bldgs, Hyderabad (OUT).

5.2CD copies